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Attorneys for Defendants Arnold Schwarzenegger, in his official capacity as Governor of the State of California; Edmund G. Brown Jr., in his official capacity as Attorney General of the State of California; and, Jack O'Connell, in his official capacity as the California State Superintendent of Public Instruction

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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| **CALIFORNIA EDUCATION COMMITTEE, LLC and PRISCILLA SCHREIBER,**<br>Plaintiffs,<br>v.<br>**ARNOLD SCHWARZENEGGER, in his official capacity as Governor of the State of California; EDMUND G. BROWN, JR., in his official capacity as Attorney General of the State of California; JACK O'CONNELL in his official capacity as California Superintendent of Public Instruction; and DOES 1 through 20 inclusive,**<br>Defendants. | 07 CV 2246 BTM (WMC)<br>**NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT BY THE STATE DEFENDANTS**<br>**[Fed. R. Civ. P. Rules 12(b)(1), (6)]**<br>Hearing Date: February 15, 2008<br>Time: 11:00 a.m.<br>Courtroom: 15<br>Judge: The Honorable Barry Ted Moskowitz<br>[Oral Argument Not Required] |

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 15, 2008, at 11:00 a.m., in the U.S. District Court, 940 Front Street, San Diego, CA 92101, Defendants Arnold Schwarzenegger, in his official capacity as Governor of the State of California; Edmund G. Brown Jr., in his official capacity as Attorney General of the State of California; and, Jack O'Connell, in his official capacity as the California State Superintendent of Public Instruction will move pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) for an order dismissing this matter in its entirety.

The motion to dismiss is made on the following specific grounds: (1) The Complaint presents no Article III "case or controversy" that is ripe under both constitutional and prudential components; (2) The Complaint fails to state a claim against the Governor, the Attorney General, and, in part, the Superintendent of Education because of Eleventh Amendment immunity; (3) The Second Cause of Action predicated on state law is barred under the Eleventh Amendment and *Penhurst St. Sch. & Hosp. v Halderman*, 465 U.S. 89 (1984); and, (4) The Court under 28 U.S.C. § 1367(c) should decline to exercise supplemental jurisdiction over the Second Cause of Action because the challenge presents a novel issue of state law.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in Support of the Motion, the Request for Judicial Notice filed In Support of this Motion, the Court's file in this action, and the oral argument of counsel.

Dated: January 11, 2008

Respectfully submitted,

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Attorney General of the State of California

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STEPHEN P. ACQUISTO
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s/Jeffrey Bedell

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